UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JANE DOE, *Plaintiff,* v. BROWN UNIVERSITY and ANDREW GEPPERT, *Defendants.*	C.A. No. 23-cv-00376 Civil Action and Jury Trial Demanded

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO PROCEED UNDER PSEUDONYM

Plaintiff Jane Doe, by and through the undersigned counsel, submits this Motion to Proceed Under Pseudonym and seeks an order of the Court permitting Plaintiff to proceed in the above-captioned case as pseudonymous plaintiff Jane Doe. Plaintiff filed a Complaint against Brown University ("Brown" or the "University") and Andrew Geppert ("Assailant") alleging, among other things, that Assailant sexually assaulted Plaintiff and Brown violated Title IX and state law by mishandling Plaintiff's report to Brown of Assailant's sexual assault. Plaintiff is a current student of the University, routinely on campus, and will continue to be on campus throughout the pendency of this litigation. To prevent harm to Plaintiff's mental health, reputation, and career prospects, Plaintiff respectfully seeks leave of this Court to protect Plaintiff's true identity from public disclosure at this time.

I. STATEMENT OF FACTS

Jane Doe is a current student at Brown, enrolled in the Fall 2023 semester. *See* Declaration of Jane Doe, attached hereto as Ex. A, at ¶ 1. On October 30, 2021, Assailant, a Brown lacrosse player, raped Plaintiff at a residence occupied by multiple male members of the

Brown men's lacrosse team and which residence is well known among Brown students and employees as the "Senior Lacrosse House.". *Id*. at ¶ 4. Plaintiff first reported Assailant's rape to Brown on or about November 4, 2021 and to Brown's Title IX Office on or about November 5, 2021. *Id*. at ¶ 5. In the months and years that have followed since Plaintiff's first Title IX Complaint, Plaintiff has been the subject of repeated harassment on campus by Assailant, other Brown students, including student and staff members of Brown men's lacrosse team, and Brown staff, all in retaliation for Plaintiff's reporting of Assailant's rape and Plaintiff's participation in the Title IX process. *Id*. at ¶¶ 6-9. Despite Plaintiff's many reports to Brown regarding the retaliatory actions of Brown faculty, other employees, and students, Brown has failed to take adequate measures to end Plaintiff's harassment and ensure her safety. *Id*. at ¶ 10.

Additionally, Plaintiff has a significant interest in maintaining her privacy and in avoiding any public association between herself and Assailant. *Id*. at ¶ 11. Given the highly sensitive and personal nature of the sexual assault perpetrated against her, Plaintiff believes that proceeding with this lawsuit under her real name will cause immediate and irreparable effect on her reputation, future educational and employment opportunities, and personal relationships. *Id*. at ¶ 12. Plaintiff's public identification would needlessly interfere with her efforts to process, cope with, and recover from the conduct described in the Complaint. *Id*. at ¶ 13. Plaintiff is also concerned about her personal safety, especially given Brown's repeated failure to stop her ongoing harassment, including on Brown's campus, and abuse and retaliatory conduct by Brown students, faculty, and other employees. *Id*. at ¶ 14.

Moreover, because she is still a Brown student and is frequently on Brown's campus, Plaintiff is concerned that she may suffer retaliation and reputational harm if her true identity is revealed. *Id*. at ¶ 15. Plaintiff also worries that her family will suffer severe emotional distress if her name is publicly disclosed. *Id.* at ¶ 16. Plaintiff has taken great care to protect the nature of her identity and has not revealed her identity or otherwise sought publicity in this matter. *Id.* at ¶ 17.

II. LEGAL ARGUMENT

The Federal Rules of Civil Procedure state that "the title of the complaint must name all the parties" and "an action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 10(a) & 17(a)(1). However, courts "approve[] of litigating under pseudonym in certain circumstances" in order to protect plaintiffs who appear in federal court. *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008); *see also Roe v. Wade*, 410 U.S. 113, 124 (1973) (hearing case with pseudonymous plaintiff without criticism); *Doe v. Bolton*, 410 U.S. 179, 187 (1973) (same). "[T]he decision whether to allow a plaintiff to proceed anonymously rests within the sound discretion of the court." *Doe v. C.A.R.S. Protection Plus, Inc.*, 527 F.3d 358, 371 n. 2 (3d Cir. 2008). To proceed anonymously, a plaintiff must demonstrate "a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Macinnis v. Cigna Grp. Ins. Co. of Am.*, 379 F. Supp. 2d 89, 90 (D. Mass. 2005) (internal quotation marks and citations omitted); *cf. Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 72 (1st Cir. 2011).

While the First Circuit has not developed a test to assess whether a plaintiff should be permitted to proceed under a pseudonym, courts in this district have applied the Third Circuit's "multifactor test" established in *Doe v. Megless*, 654 F.3d 404 (3d Cir. 2011). *See Doe v. Trustees of Dartmouth Coll.*, No. 18-cv-040-LM, 2018 WL 2048385, at *5 (D.N.H.. May 2, 2018) (applying the Third Circuit's test because it "is consistent with the overall aim of the First Circuit's framework for sealing judicial records, insofar as the district court must proceed from the presumption of an open litigation process and may only limit such access in compelling circumstances.”).

Under the Third Circuit’s test, the Court must consider:

> (1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant’s identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant’s identities; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; ... (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives.... [(7)] the universal level of public interest in access to the identities of litigants; [(8)] whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant’s identities, beyond the public’s interest which is normally obtained; and [(9)] whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated.

Doe v. University of Maine System, 2020 WL 981702, at *4 (D. Me. Feb. 20, 2020) (alternations in original) (quoting *Megless*, 654 F.3d at 409). “The core issue in the Third Circuit’s test is ‘whether a litigant has a reasonable fear of severe harm that outweighs the public’s interest in open litigation.’” *Id.* (quoting *Megless*, 654 F.3d at 408).

Here, these factors strongly favor permitting Plaintiff to proceed under a pseudonym.

First, Plaintiff has taken measures to keep her identity secret. Plaintiff has not revealed her identity or otherwise sought publicity in this matter and her involvement in Brown’s Title IX process was confidential. Accordingly, Plaintiff’s identity has not been revealed and the first factor is satisfied.

Second, Plaintiff has a compelling bases for proceeding pseudonymously. Plaintiff is currently on Brown’s campus as an undergraduate student. She has been experiencing harassment from Brown students, faculty, and other employees related to her Title IX Complaint since she first filed the same, harassment which has remained ongoing despite her many pleas to

Brown to take action. Additionally, as Plaintiff is a survivor of a significant sexual assault, she continues to suffer the effects of the trauma she experienced at Brown.

Where a moving party evidences anticipated psychological damage if her identity is disclosed, "courts generally find a risk of retaliatory harm." *Doe v. Sessions*, No. CV 18-0004 (RC), 2018 WL 4637014, at *4 (D.D.C. Sept. 27, 2018); *see also Cabrera*, 307 F.R.D. at 7 ("[P]ublic disclosure of the plaintiff's true identity is very likely to result in psychological trauma."). "Were the Court to force the plaintiff to reveal her identity, [it] would risk undermining the psychological treatment the plaintiff has already undergone since the alleged incident and potentially retard the progress the plaintiff has made." *Id.*; *see also Spoa*, 2013 WL 5634337, at *3 (holding public disclosure of plaintiff's legal name in sexual harassment suit would "pose[] needless risk of mental harm"); *De Amigos*, 2012 WL 13047579, at *2.

Here, the risk of further emotional harm to Plaintiff strongly weighs in favor of shielding her identity from public disclosure. If Plaintiff must litigate this case using her real name, not only is there a high probability that her reputation may be significantly harmed, but also there is a great risk that her future educational and employment prospects will be harmed and that she and her family could suffer severe emotional distress. *See generally* Ex. A. "[C]ases stemming from investigations of sexual abuse on college and university campuses have garnered significant media attention, posing the risk of further reputational harm to both the plaintiffs in these cases and their accusers." *Dartmouth*, 2018 WL 2048385, at *6 (quoting *Doe v. Colgate Univ.*, No. 5:15–cv–1069, 2016 WL 1448829, at *2 (N.D.N.Y. Apr. 12, 2016)). Accordingly, federal courts have shielded parties from such harm. *Dartmouth*, 2018 WL 2048385, at *7; *Doe v. Cabrera*, 307 F.R.D. 1, 7 (D.D.C. 2014) (expressing "grave concern that [public identification] could exacerbate any psychological issues the plaintiff is currently experiencing"); *Doe No. 2 v. Kolko*, 242 F.R.D. 193, 197 (E.D.N.Y. 2006) (recognizing that internet technology can magnify retaliatory harms, particularly by facilitating community ostracism). This factor, therefore, weighs in favor of pseudonymity.

Third, forcing Plaintiff to reveal her name publicly would deter similarly-situated litigants from litigating similar claims that are important issues of public concern. *Univ. of Maine*, 2020 WL 981702, at *6 (citing *Megless*, 654 F.3d at 410). The third factor thus weighs in favor of pseudonymity. *See Colgate Univ.*, 2016 WL 1448829, at *2-3 (noting the "potential chilling effect that forcing Plaintiff to reveal his identity would have on future plaintiffs facing similar situations"); *Dartmouth*, 2018 WL 2048285, at *6 (acknowledging *Colgate*).

Fourth, the public interest in learning Plaintiff's identity is minimal as Plaintiff is a "private citizen seeking to litigate private and highly-sensitive issues, not a public official for whom the public possesses a heightened interest." *Doe v. Oshrin*, 299 F.R.D. 100, 104 (D.N.J. 2014). Further, the "proceedings will remain public, thereby preserving any general public interest in the subject matter of this litigation." *Id.* The public interest in favor of permitting anonymity therefore outweighs any general public interest in open legal proceedings. *See, e.g., Doe v. Provident Life & Acc. Ins. Co.*, 176 F.R.D. 464, 469 (E.D. Pa. 1997). Thus, the fourth factor weighs in favor of pseudonymity.

Fifth, Plaintiff has a strong interest in maintaining confidentiality and is unlikely to pursue her claims if this Court denies her the right to proceed pseudonymously. This weighs in favor of pseudonymity. *Dartmouth*, 2018 WL 2048385, at *6.

Sixth, Plaintiff has no "nefarious reasons" for seeking to use a pseudonym. *Id.* In her Declaration, she has set forth compelling reasons for seeking to proceed under pseudonyms. *See* Ex. A. Furthermore, this motion is not brought "to impair defendant's ability to defend [itself], to delay the litigation or to increase the costs to defendant." *Provident Life & Accident Ins.*, 176 F.R.D. at 469. The parties can enter into a protective order that ensures that Assailant and Brown are not prejudiced in discovery or in their ability to defend the case. This factor weighs in favor of pseudonymity.

Seventh, this litigation concerns policies and procedures of a private college relating to reports of sexual misconduct, assault, and harassment. Brown is "not an ordinary private party, with interests relating solely to its personal life and business reputation," but, rather, a university "organized [] to perform an important, public service"—educating young people. *See EW v. New York Blood Center*, 213 F.R.D. 108, 112 (E.D.N.Y. 2003). Therefore, this case is more "analogous to one involving a government defendant, where personal anonymity is more readily granted because of the existence of a public interest in the action and a lesser interest in personal reputation." *Id.* This factor also weighs in favor of pseudonymity.

Eighth, Plaintiff is not a public figure and "the public's interest in the subject matter of, or any proceedings relating to, this litigation, will not be impeded merely because [their identities are] kept private." *Dartmouth*, 2018 WL 2048385, at *7 (citing *Doe v. Purdue*, 321 F.R.D. 339, 343 (N.D. Ind. 2017) ("The actual identities of Plaintiff and his accuser are of minimal value to the public.")). This is especially true where, as here, the subject matter of the proceedings involves highly sensitive and intimate facts. *See also Doe v. Va. Polytechnic Inst. & State Univ.*, No. 19-249, 2020 WL 1287960, at *3 (W.D. Va. Mar. 18, 2020) (finding that allegations of sexual misconduct "involve sensitive and highly personal facts"); *Purdue*, 321 F.R.D. at 342 (stating that "this litigation requires the disclosure of 'information of the utmost intimacy,' . . . including information regarding Jane Doe's allegations of sexual misconduct, and the details of the University's findings"); *Doe v. Rector & Visitors of George Mason Univ.*, 179 F. Supp. 3d

583, 593 (E.D. Va. 2016) (stating that "the litigation here focuses on 'a matter of sensitive and highly personal nature'"). This factor weighs in favor of anonymity.

III. CONCLUSION

For the foregoing reasons, Plaintiff has demonstrated that a majority of the *Megless* factors weigh in favor of pseudonymity. Accordingly, Plaintiff respectfully requests that this Court grant this Motion.

Dated: September 12, 2023

Respectfully submitted,

/s/ Louise A. Herman

HERMAN LAW GROUP
Louise A. Herman
1445 Wampanoag Trail
Suite 104
E. Providence, RI 02915
Tel: 401-277-4110
lherman@lhermanlaw.com

GRANT & EISENHOFER P.A.
Irene Lax (*Pro Hac Vice Forthcoming*)
485 Lexington Avenue, 29th Floor
New York, NY 10017
Tel: (646) 722-8512
kfisch@gelaw.com

GRANT & EISENHOFER P.A.
Elizabeth A. Bailey (*Pro Hac Vice Forthcoming*)
Cynthia B. Morgan (*Pro Hac Vice Forthcoming*)
Samuel Mukiibi (*Pro Hac Vice Forthcoming*)
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
cmorgan@gelaw.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record by operation of the Court's ECF filing system, this 12th day of September, 2023.

/s/ *Louise A. Herman*
Louise A. Herman